UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

SECURITAS SECURITY SERVICES USA, INC.

Employer

and

Case 20-RC-107222

NATIONAL UNION OF PROTECTIVE SERVICES ASSOCIATIONS Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board has considered objections to an election held on August 23, 2013, and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The revised tally of ballots shows 39 for and 32 against the Petitioner, with no undetermined challenged ballots.

The Board has reviewed the record in light of the exceptions and brief, and has adopted the Regional Director's findings and recommendations, and finds that a certification of representative should be issued. ¹

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The Employer's Objection 4 alleges Board agent misconduct in the form of friendly chatting and laughing between the Board agent and two of the Petitioner's representatives for 5-10 minutes prior to the second voting session, in a public area outside the corridor leading to the polling place. During that time, the representatives handed out cards of unknown content to prospective voters in the Board agent's presence. The three then walked together through a secured door into the corridor leading to the polling place, observed by a number of employees. The Regional Director overruled Objection 4 without a hearing, finding that the evidence presented did not raise a substantial or material issue with respect to the Board's neutrality in the election. We agree.

In cases involving alleged Board agent fraternization with a party, the question is whether the agent's conduct "tends to destroy confidence in the Board's election process," or otherwise

could reasonably be interpreted as impugning the Board's neutrality in the election. See *Athbro Precision Engineering Corp.*, 166 NLRB 966, 966 (1967); *Glacier Packing Co., Inc.*, 210 NLRB 571, 573 (1974). Here, even assuming that the cards handed out by the union representatives contained campaign material, we find that the Employer's proffered evidence does not warrant setting aside the election. Compare *Rheem Mfg. Co.*, 309 NLRB 459, 462 (1992) (refusing to set aside an election where employees observed a Board agent walking, talking, and laughing with the petitioning union's election observer in the plant between voting periods), with *Athbro*, above, 166 NLRB at 966 (setting aside an election where a Board agent was seen drinking beer with a union representative at an off-site café between voting periods). There is no evidence, for example, that the Board agent made any statements that would suggest to employees that the Board either endorsed the Petitioner or opposed the Employer. See, e.g., *Glacier Packing*, above, 210 NLRB at 573 (finding that a Board agent's remarks could reasonably be understood to indicate that the Board opposed the employer in the election).

Contrary to our dissenting colleague, moreover, we further agree with the Regional Director that the record evidence does not warrant a hearing. An objecting party is entitled to a hearing only where it presents evidence that raises "substantial and material factual issues" that, if proved, would warrant setting aside the election. *Park Chevrolet-Geo, Inc.*, 308 NLRB 1010, 1010 fn. 1 (1992); *River Walk Manor, Inc.*, 269 NLRB 831, 831 (1984), later proceeding 281 NLRB 199 (1986), enf. denied mem. 833 F.2d 310 (4th Cir. 1987). There is no claim that the Board agent engaged in conduct different from, or in addition to, that described above. Neither the bare possibility that a hearing might elicit more evidence, nor our dissenting colleague's view, persuades us that a hearing is warranted under the established standard. As stated, even viewing the evidence in the light most favorable to the Employer, we are not persuaded that the Employer has established a prima facie case of objectionable fraternization. In those circumstances, we agree with the Regional Director's decision to overrule the Employer's Objection 4 without a hearing.

Member Johnson would find that the Employer has raised substantial and material issues of fact warranting a hearing on its Objection 4. The preliminary evidence presented by the Employer indicates that, immediately prior to opening the second voting session, the Board agent engaged in iocular conversation for five to ten minutes with two union representatives while they simultaneously handed out literature to eligible voters just outside a door leading to the election area. A number of voters on their way to the election area observed this activity. Although the literature was not identified, given that the Board here must construe all facts in a light most favorable to the party seeking an objections hearing, Cornuts, Inc., 314 NLRB 1133, 1133 fn.1 (1994), it is reasonable to assume that the literature was associated with the union's campaign. Here, what raises the potential for finding objectionable agent misconduct impugning the Board's neutrality is the juxtaposition of active union campaigning nearby a polling area with the Board agent's *simultaneous* friendly interaction with the campaigners. No case cited by the majority addresses that scenario. That the Board agent made no statements suggesting he endorsed the Petitioner, noted by the majority, is not dispositive where, arguably, actions speak louder than words and could present a picture of Board agent support for the Petitioner. Under these circumstances, Member Johnson views the Employer's showing as sufficient to warrant a full evidentiary hearing as to the nature and extent of the Board agent's conduct and whether it could reasonably be construed as casting doubt on the Board's neutrality under the governing standard of Athbro Precision Engineering Corp., 166 NLRB 966 (1967).

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for National Union of Protective Services Associations, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: All full-time and regular part-time law enforcement officers and traffic control and airport security officers employed by the Employer at the Kahului Airport at 1 Kahului Airport Road, Kahului, Hawaii 96732.

Excluded: All lieutenants, captains, managerial employees, office employees, professional employees, supervisors as defined by the Act, and all other employees of the Employer at the Kahului Airport.

Dated, Washington, D.C., February 7, 2014

Member
Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD